SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 802

JESSE S. SHIMA,

Petitioner,

vs.

THOMAS A. BROWN.

MOTION AS TO RECORD.

To the Honorable the Chief Justices and Associate Justices:

Petitioner moves that his Petition for allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia, may be considered upon the Appendices to the Briefs of the parties filed in this cause in said Court of Appeals, and upon the proceedings and opinion in that Court, and for reasons therefor respectfully shows:

1. There was no challenge in the Court of Appeals as to any of the facts, and the only issues there were, and are here, of law.

2. The Appendices to said briefs carry all pertinent facts and prior proceedings (R. 1-31) and it appears clear that the Court of Appeals relied solely upon said Appendices as record there in this cause.

3. The Opinion of the Court of Appeals (R. 33, 34) sets forth pertinent facts and prior proceedings with completeness and accuracy.

4. February 20, 1943, petitioner filed Designation in the Court of Appeals (R. 42, 43), designating, for use as record in connection with this petition, said Appendices and the proceedings and opinion in that Court, serving copy of such Designation upon respondent (R. 43). The latter filed no Counter-Designation, nor did he object otherwise.

5. Despite oral and written requests by petitioner, and without advancing any reason therefor, and presumably with the purpose of desiring to discourage petitioner (brought into Court as a defendant) in his steps to obtain relief on certiorari, respondent now refuses to stipulate that this petition may be considered upon said Appendices and proceedings and opinion in the Court of Appeals.

6. Certified copy of said Appendices, and of said proceedings and opinion, has been lodged with the Clerk of this Court, along with ten plain copies of said Appendices and of said opinion.

7. No reference is made in said petition to any portion of the record not contained in said Appendices or in said proceedings and opinion.

8. The original record in the Court of Appeals has also been lodged with the Clerk of this Court.

9. If certiorari is granted, petitioner will promptly supply the requisite additional printed copies of said Appendices and of said proceedings and opinion; or, if so required, will promptly supply the requisite number of printed copies of further portions of the record in the Court of Appeals, or of the complete record there.

10. Please see *Fidelity Assurance Association* v. *Sims*, No. 319, this Court this Term, motion to consider petitioner for certiorari on Appendices, and petition for certiorari, granted.

Respectfully submitted,

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